

REMARKS

A. Front Page of Office Action and Claim Status

The cover page of the June 28, 2004 office action indicates that claims 1-29 are pending in the application; and that claims 1-29 are rejected.

Claims 1-34 are pending. Dependent claims 30-34 have been added. Claims 1, 4, 7, 20-26, 28, and 29 are the independent claims.

B. Rejections

1. The Rejections of Claims 1-19, 26, and 28 Under 35 USC 101

Claims 1-19, 26, and 28 stand rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter. In support of the rejections, the examiner states that:

The independently claimed steps of receiving, determining, selecting and pairing information do not require structural interaction or mechanical intervention such that the invention falls within the technological arts permitting statutory patent protection. The claimed step of receiving, determining, selecting and pairing information does not apply, involve, use or advance the technological arts since all of the recited steps can be performed in the mind of user or by use of a pencil and paper. Claims reciting those steps can be performed by interpersonal communications such that the claimed steps can be performed without a physical structure or mechanical object. The method only constitutes an idea of pairing promotions.

As the technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or filed [sic] of use) or mere implications of employing a machine or article or manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Nothing in the body of the claim, recites any structure or functionality to suggest that a computer performs the recited steps. Therefore, the preamble is taken to merely recite a field of use.

Additionally, for a claimed invention to be statutory the claimed invention must produce a useful, concrete and tangible result. In the present case, the claimed invention produces promotion (i.e., repeatable) prediction (i.e., useful [and] tangible). Although the recited process produces a useful, concrete and tangible result, since claimed invention, as a whole, is not with the technological art as explained above, the claims are deemed to be directed to non-statutory matter. [Office action mailed June 28, 2004 page 2 line 17 through page 3 line 17.]

In response, the applicant points out that the examiner has misapplied the law respecting 35 USC 101 and the PTO doctrine respecting "technological arts." In point of fact, claim 1-19, 26, and 28 are specifically limited to a computer implemented method, reciting "A computer-implemented method...."

The examiner's conclusion is flawed because the examiner has improperly construed the claims by reading out the limitation of the preamble and ignored the specification.

The examiner's claim construction is that " all of the recited steps can be performed in the mind of user or by use of a pencil and paper. " However, performing all of the steps "in the mind of user or by use of a pencil and paper" is not subject matter defined by "A computer-implemented method...." as claimed by claims 1-19, 26, and 28. Accordingly, the examiner's claim construction flies in the face of common sense.

The examiner's allegation relating to claims 1-19, 26, and 28 that "mere implications of employing a machine or article or manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble" is combination of implied conclusions on claim construction applied to the technological arts test, and the implied conclusions on claim construction are incorrect. The examiner's implied conclusions on claim construction are that the recitation of the preamble of "A computer implemented method ..." (i.e., the preamble) provides a "mere implication" of "employing a machine or article or manufacture to perform some or all of the recited steps." The word "mere" means, according to the Web

version of the Compact Oxford English Dictionary (at URL: http://www.askoxford.com/concise_oed/mere_1?view=uk): "adjective 1 that is nothing more than what is specified. 2 (the merest) the smallest or slightest." In other words, the examiner states that the preamble "'A computer implemented method ...'" means only a minimal implication that the subject matter defined by claim is "computer implemented." In other words, the examiner has discounted the recitation "computer implemented" such that the examiner construes the subject matter defined by claims reciting to not require computer implementation.

In reply, I disagree with the examiner's conclusion that claims reciting "A computer implemented method ..." are not limited to methods implemented with a computer. Words have meaning. The written words of the claim cannot be ignored.

Moreover, the examiner's statement that:

As the technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or filed [sic] of use) or mere implications of employing a machine or article or manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Nothing in the body of the claim, recites any structure or functionality to suggest that a computer performs the recited steps. Therefore, the preamble is taken to merely recite a field of use.

contains an erroneous statement of the law of claim construction. Specifically, the statement that "unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble." is an incorrect and backward statement of the law of claim construction. In fact, it is the law that when the preamble breathes life and meaning into the claim, it is a limitations.

Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989). The Court of Appeals for the Federal Circuit stated that this interpretation is binding on the USPTO, and therefore upon the examiner, in Rowe v. Dror, ___ F.3d ___, ___, 42 USPQ2d 1550, 1553-54 (Fed. Cir. 1997), stating that:

Where a patentee uses the claim preamble to recite structural limitations of his claimed invention, the PTO and courts give effect to that usage. See *id.*; Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989). Conversely, where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation. See Bell Communications, 55 F.3d at 620; Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Therefore, examiner, by implication from statements in the office action at page 2 line 17 to page 3 line 4 admits that it is necessary to give meaning to the preamble "computer implemented" in order to define an invention so implemented, and therefore applicable CAFC law requires the examiner to construe these claims as methods performed using computers. Thus, the examiner's claim construction reading out computer implementation from the claims is improper and incorrect.

Moreover, the examiner's statement of the law relating to the technological arts, which is that:

As the technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or filed [sic] of use) or mere implications of employing a machine or article or manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Nothing in the body of the claim, recites any structure or functionality to suggest that a computer performs the recited steps. Therefore, the preamble is taken to merely recite a field of use.

is incorrect.

Specifically, the examiner's statement that "employing a machine or article or

manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea" is an incorrect statement of the law. 35 USC 101 is the law. Judicial construction of 35 USC 101 provides one test for compliance with the utility prong of 35 USC 101; the "useful, concrete, and tangible" result test specified by the Court of Appeals for the Federal Circuit, which the examiner admits (at office action mailed 6/28/2004 page 3 lines 13-17) is satisfied by claims 1-19, 26, and 28.

The examiner alleges that claims 1-19, 26, and 28 do not satisfy the "within the technological arts" doctrine approved by the Board of Patent Appeals and Interferences in, Ex parte Bowman, 2001 Pat App. Lexis 46 (BPAI June 12, 2001)¹.

In reply, the applicant submits that the examiner is incorrect. Ex parte Bowman indicates that "employing a machine or article or manufacture to perform some or all of the recited steps" does satisfy 35 USC 101's utility requirement. Thus, the examiner's conclusion is clearly inconsistent with the Board of Patent Appeals and Interference's published decision, Bowman. In Bowman, a panel of the Board held that the technological arts test was only not satisfied if the specification and claims did not limit the claimed invention to being computer implemented, stating in pertinent part that, emphasis of the pertinent passage added:

With respect to the rejection under 35 U.S.C. § 101, the examiner asserts that the claimed invention does not fall within the technological arts because no form of technology is disclosed or claimed [answer, page 3]. *** The examiner responds that ... appellant has not recited the use of a computer in either the specification or the claims. The examiner finds that neither the specification nor the claims discuss the use of any technology with respect to the claimed invention [answer, pages 5-6].

We agree with the examiner. Appellant has carefully avoided tying the disclosed and claimed invention to any technological art or environment. As noted by the examiner, the disclosed and claimed invention is directed to nothing

¹ Attachment 1 is a copy of Ex parte Bowman, 2001 Pat App. Lexis 46 (BPAI June 12, 2001).

more than a human making mental computations and manually plotting the results on a paper chart [answer, page 5]. The *Examination Guidelines for Computer-Related Inventions are not dispositive of this case because there is absolutely no indication on this record that the invention is connected to a computer in any manner*. *** In summary, we find that the invention before us is nothing more than an abstract idea which is not tied to any technological art, environment, or machine, and is not a useful art as contemplated by the Constitution of the United States. The physical aspects of claim 1, which are disclosed to be nothing more than a human manually drawing a chart and plotting points on this chart, do not automatically bring the claimed invention within the technological arts. For all the reasons just discussed, we sustain the examiner's rejection of the appealed claims under 35 U.S.C. § 101. [Ex parte Bowman, 2001 Pat. App. Lexis 46 (BPAI June 12, 2001).]

Thus, Ex parte Bowman held that (1) claims that did not limit the claimed invention to being computer implemented and (2) a supporting specification that contained no computer implemented embodiment of any limitation claimed failed to comply with an alleged technological arts requirement in 35 USC 101. Ex parte Bowman therefore indicates by negative implication that when either the claims recite a technological limitation, such as a computer, or the specification discloses an embodiment in which limitations defined by the claims are performed by technology, such as computer technology, the claimed subject matter as a whole is statutory.

The rejected claims 1-19, 26, and 28 define computer implementation, and the specification of this application discloses only computer implementation; see the brief description of Figures 1 and 2 noting network implementation, and the description at pages 6 and 7 of computer hardware for that network. Thus, claims 1-19, 26, and 28 are useful, in the technological arts, and therefore constitute patentable subject matter within the meaning of 35 USC 101. Therefore, the rejections based upon 35 USC 101 should be withdrawn.

2. The Rejections of Claims 1-29 Under 35 USC 102 as Being Anticipated by Deaton et al. (USP 6,334,108) - Summary why the Rejections are Improper

Claims 1-29 stand rejected under 35 USC 102(e) as being clearly anticipated by Deaton et al. (USP 6,334,108, hereinafter “Deaton”). The rejections as grouped and presented by the examiner are discussed below.

Generally, Deaton discloses using the frequency of purchase of products in a customer’s shopping history to formulate a targeted marketing plan. See for example, Deaton column 6 lines 29-34, which states that:

New customers are readily identified, and prior shopping history such as frequency and dollar volume information may be used to establish customer profiles and to target advertising, marketing and promotional programs, and for other customer relations purposes. [Deaton column 6 lines 29-34.]

At column 7, lines 46-48, Deaton uses the example of varying incentives to consumers based on their shopping frequency. In addition, the independent claims in Deaton (claims 1, 15, 26, and 37) recite the following (or a substantially similar) reference regarding products frequency purchases by a customer:

. . . information regarding a product frequently previously purchased by said consumer relative to said plurality of different products previously purchased.

..

In addition to utilizing a customer’s frequency, particularly in the passages cited by the examiner, Deaton is directed towards items that had previously been purchased by an identified customer. Deaton provides incentives to certain customers and subsequently evaluates the customer’s response to the first incentive, with the purpose of refining the terms of a future incentive to the same consumer for the same or a similar product. See, for example, Deaton column 119 lines 5-35.

In contrast, the subject application bases its determinations of what promotions to provide to a consumer on relevance (defined to mean the likelihood that a promotion will be exercised), not frequency of prior promotions.² The subject application takes a promotional offer for which a consumer has a low relevance³ and a promotional offer for which the same consumer has a high relevance, and pairs the two promotional offers so that the low relevance offer can “piggyback” on the appeal of the high relevance offer such that the low relevance offer has a relatively greater chance of being redeemed than if it was not paired.

Deaton’s dependence on frequency (or infrequency) does recognize the existence of relatively high and low relevance promotions, and it does not suggest pairing high and low relevance promotional offers.

In Deaton, frequency measures, for example, how often a customer has purchased a specified product during a specified time period. In contrast, relevance, as defined in the subject application, measures the likelihood that a promotion will be exercised.

Accordingly, Deaton does not disclose the pairing of a low relevance and a more relevant promotion, and the relevance determinations, as defined by independent claims 1, 4, 7, 20, 21, 22, 23, 24, 25, 26, and 29. Therefore, Deaton does not anticipate any claim. Therefore, the rejections under 35 USC 102 of claims 1-29 based upon Deaton are improper and should be withdrawn.

A more detailed response to the rejections of all claims follows.

**A. The Rejection of Claim 1 Under 35 USC 102: Deaton does not Disclose
Selecting a Second Promotion Determined to be More Relevant to a**

² Attachment 1 is a copy of the definition of “frequency” as defined by the American Heritage Dictionary of the English Language, which defines “frequency” as “The number of times a specific periodic phenomenon occurs within a specified interval”.

³ The “relevancy” of a promotion is defined in this application to mean the likelihood that a promotion will be exercised. [Specification page 4 lines 23-24.] Attachment 2 is a copy of page 4 of the specification.

Consumer and Pairing a First Low Relevance Promotion with a Second Promotion

In support of the rejection of claim 1, the examiner stated that:

Regarding claim 1, Deaton teaches receiving identification information; determining a purchase history based upon the identification information, selecting a second promotion determined to be more relevant and paring [sic] the promotions (see fig. 43 and col. 119 and col. 149 line 43 to col. 150 line 18). [Office action mailed June 28, 2004 page 4 lines 11-14.]

Column 119 in Deaton states that:

Step	Description
1	Determine if this account is to receive incentives based on shopping history criteria pertaining to store visits, purchases to departments, purchases to a product group, or purchases to a single product. If account does not receive incentives, GOTO 8
2	Issue incentive and record incentive in customer record.
3	Monitor and record in customer record customer's response to incentive.
4	If a preset response criteria is met GOTO 6
5	Preset response criteria was not met. Incentive may be modified in response

to failure to meet response criteria

such as:

Varying the value of the
incentive

Changing the conditional terms
of the incentive

Varying the product of the
incentive (i.e. Offering cash
discount versus merchandise)

No modification, retry incentive
GOTO 3.

- 6 Preset response criteria was met.
Incentive may be modified in response
to success in meeting response
criteria such as:

Reducing the incentive over
preselected period of time so as
to gradually taper off
incentives

Varying the product in order to
accomplish same as above

No modification maintain
incentive over preselected
period of time

- 7 If targeted marketing campaign is NOT
complete, GOTO 3

- 8 END OF PROCESS [Deaton column 119.]

Column 149 line 43 to column 150 line 18 in Deaton states that:

15. A method for performing targeted marketing on shopping customers with a computer having a processor and memory, the method comprising the steps of:

entering into the memory at a store's point-of-sale the account code of a plurality of payment instruments from a plurality of different financial institutions for use as a unique customer identification code in response to the presentation of customers' payment instruments at the point-of-sale;

entering into the memory data at the point-of-sale relating to the customer's shopping transactions, including data relating to a plurality of different products purchased by the customer;

creating a database of the store's customers' shopping transactions and account codes in response to said account codes and said data, including information regarding products frequently previously purchased by the customer relative to said plurality of different products previously purchased;

generating with the processor a first signal in response to entry of account codes of customers whose prior transactions at the store meet shopping history criteria, said first signal being contingent upon the customer meeting a future shopping criteria and said first signal being related to at least one of said products stored in said database as being frequently previously purchased by the customer relative to said plurality of different products previously purchased.

16. The method of claim 15 and further comprising:

effecting a first sales promotion to said customer in response to said first signal;

monitoring said customer's shopping transactions subsequent to said first sales promotion;

generating with the processor a second signal in dependence upon the results of said monitoring of a customer whose shopping activity fails to meet a response criteria; and

effecting a subsequent second sales promotion to said customers whose shopping activity fails to meet said predetermined response criteria, said second sales promotion being differentiated from said first sales promotion. [Deaton column 149 line 43 to column 150 line 18.]

In reply, the applicant submits that figure 43 and column 119 and column 149 line 43 to column 150 line 18 do not disclose selecting a second promotion determined to be more relevant to a consumer and pairing a first low relevance promotion with the second promotion. The applicant pointed out *infra* that frequency does not disclose relevancy. Therefore, Deaton does not anticipate the limitations defined by the recitation “selecting a second promotion determined to be more relevant to said consumer identified by said identification information based upon said category purchase history of said consumer; and pairing said first low relevance promotion with said second promotion,” as recited in claim 1.

In the cited reference and figure, Deaton discloses modifying one incentive based on a consumer’s response criteria. For example, if the consumer responded favorably to the first incentive, the subsequent incentive offered would be less desirable and if the consumer responded unfavorably to the first incentive, the subsequent incentive offered would be more desirable. See, for example, Deaton column 119 lines 13-34. Deaton does not disclose “pairing” promotions. It discloses offering a first promotion, monitoring the consumer’s response to the first promotion, and then based on the consumer’s response, offering a subsequent promotion. Thus, this example in Deaton does not disclose printing, exercising, or displaying the promotions together, and therefore Deaton does not disclose pairing promotions.

In contrast, the subject application discloses, in support for the recitation in claim 1. See, for example, page 3 lines 17-23 of the specification, which states that:

These and other objects of the invention are realized by providing a novel method, system, and computer-readable medium that use a historical record of consumer behavior and/or demographic information relating to a first product and/or product class to identify a “more relevant” promotion that is to be “paired”

with a second “low relevance” product and/or product class. By pairing a “more relevant” promotion with a “low relevance” promotion, the consumer’s attention can be captured and the likelihood that the “low relevance” promotion will be exercised increased. [Specification page 3 lines 17-23.]

Since the passages and figure that the examiner cites in Deaton do not disclose selecting a second promotion determined to be more relevant to a consumer and pairing a first low relevance promotion with a second promotion, the rejection of claim 1 is improper and should be withdrawn.

Because claims 2, 3, 10-19, and 27 depend either directly or indirectly from claim 1, the rejections of claims 2, 3, 10-19, and 27 are also improper and should be withdrawn.

B. The Rejection of Claim 4 Under 35 USC 102: Deaton does not Disclose Selecting a Second Promotion Determined to be More Relevant to a Consumer and Pairing a First Low Relevance Promotion with a Second Promotion

In support of the rejection of claim 4, the examiner states that:

Regarding claim 4, Deaton teaches receiving identification, determining promotion usage denominator using the received information; selecting a second promotion based upon promotion usage denominator and pairing the two promotions (see fig 38 and col. 97 line 39 to col. 98 line 31). [Office action mailed June 28, 2004 page 4 lines 17-20.]

Column 97 line 39 to column 98 line 31 of Deaton states that:

Example: The BCTT contains a number of generic brands and coupon UPC's with a profile value indicative of the "bargain hunter" value of the product or coupon. Assume Customer A purchases a large number of generic items and

redeems many coupons, this customer on a scale of 1 to 10 may have a profile value of 9. On the other hand, Customer B purchases many items that either have no match in the BCTT, or items in the BCTT that indicate that price is little or no object for this consumer. Customer B may have a profile value of 1. [Deaton column 97 line 39 to column 98 line 31.]

FIG. 38 is a program flow diagram illustrating the use of the profile value determined in FIG. 37 in order to determine how valuable a coupon will be for a particular customer. The process begins with the following:

Step	Description
267	Access the target coupon from the Coupon Database.
268	This Coupon has a variable value associated with it. Match this account's profile value with the range of values to determine the value of the coupon.
269	If value is not greater than 0, GOTO 272.
270	Build coupon based on value.
271	Pass coupon back to calling procedure so it may be added to the coupon list for dispersment.
272	End of Process. These profile values may now be used as an indication of how much value to assign to individual coupons. The assumption being that customers with a high profile value require greater

incentive than those with lower value.

Example: Assume a manufacturer is promoting a particular product and is selling the product to the store at \$1.00 off the regular cost. Using profiles, the store can regulate the amount off for each customer based on their profile value. Assume both customers in the previous example are to receive this promotion at the point-of-sale. Customer A has demonstrated that he/she only buys cut-rate products at the lowest price (profile value of 9). If the value of the coupon is set up on a straight line relation to profile, then this customer would receive a coupon offering 90¢ off. In contrast, Customer B has demonstrated little sensitivity to price (profile of 1) and therefore needs less incentive to buy this product. He/she receives a coupon for 10¢ off.

In reply, the applicant submits that fig 38 and column 97 line 39 to column 98 line 31 do not disclose selecting a second promotion determined to be more relevant to a consumer and pairing a first low relevance promotion with a second promotion. Therefore, Deaton does not anticipate the limitations defined by the recitation “selecting a second promotion determined to

be more relevant to said consumer identified by said identification information based upon said category purchase history of said consumer; and pairing said first low relevance promotion with said second promotion” as recited in claim 4.

In the cited passage and figure, Deaton discloses using a consumer account profile to determine the value of a coupon (figure 38, 268) and dispense the coupon at the point of sale (figure 38, 271). See also column 98 lines 14-31 in Deaton, which discloses using a consumer’s profile to regulate the discount on a specific product for a specific consumer. In the example described on column 98 lines 14-31 in Deaton, two customers with different sensitivities to price receive coupons for different discount amounts for the same product, based on the customers’ price sensitivities. However, Deaton does not disclose “pairing” promotions. See for example, figure 38, which discloses a single coupon to be issued to a consumer and does not disclose an association with another promotion, as disclose in the subject application at page 4 lines 25-29. Thus, Deaton does not disclose the pairing limitation defined by “selecting a second promotion determined to be more relevant to said consumer identified by said identification information based upon said category purchase history of said consumer; and pairing said first low relevance promotion with said second promotion” as recited in claim 4.

Therefore, the rejection of claim 4 is improper and should be withdrawn.

Because claims 5, 6, 10-19, and 27 depend either directly or indirectly from claim 4, the rejections of claims 5, 6, 10-19, and 27 are also improper and should be withdrawn.

**C. The Rejections of Dependent Claims 5 and 6 Under 35 USC 102:
Deaton does not Disclose a Promotion Usage Denominator Relating to
a Value of Promotions Exercised by a Consumer or to the Location
where Promotions Exercised by the Consumer**

In support of the rejections of claims 5 and 6, the examiner states that:

Regarding claims 5 and 6, Deaton teaches the usage denominator relates to a value of promotions and the location of the promotions exercised by consumer (see col. 115 lines 41 to col. 116 line 21 and fig. 43-45). [Office action mailed

June 28, 2004 page 4 lines 21-23.]

Column 115 lines 41 to column 116 line 21 in Deaton states that:

Householding is activated linking the various accounts of various payment instruments within a single household based on the household's telephone number.

Historical shopping history is transferred between stores to ensure purchases at all locations is merged.

The consumption of the following products are tracked in order to arrive at an average rate of consumption of bakery type snack products (PRODUCT TYPE):

1. Manufacturer's own product group.
2. Other manufacturer's chocolate chip cookies (BRANDS B, C, and D)

UPC's and product sizes in ounces are stored in the Bar Code Tracking Table (BCTT).

Cookies other than chocolate chip (i.e. BRAND E'S creme filled Cookies).

Other bakery type snack items such as BRAND F's cupcakes and other cake type snack items.

The following Levels of Coupon "A" are set with each level providing incentives for 5 trips. The "deal" represents the discount offered off of list price for each level, as shown on Table 11.

BRAND A is indifferent to which of their variety of chocolate chip cookies is purchased, so a "grab bag" is set up to rotate through the five variations in the following manner:

Item 1--BRAND A chocolate chip cookie--original

Item 2--BRAND A chocolate chip cookie--w/fudge stripes

Item 3--BRAND A chocolate chip cookie--chewy

Item 4--BRAND A chocolate chip cookie--w/big chips

Item 5--BRAND A chocolate chip cookie--w/candy coated chips [Deaton column 115 lines 41 to column 116 line 21.]

In this way, the first time the "grab bag" is accessed, the "original" BRAND A is used. The second time, BRAND A "w/fudge stripes" is used. The third time, "chewy" is used, and so on, looping through the five varieties in succession.

The criteria for infrequency to the product group are as follows:

A tracking period of 10 or more weeks must be collected for an account (or accounts within a single household) before targeting that account.

Of the consumption rate accumulated for the whole PRODUCT TYPE, a consumption rate of 50% or less of BRAND A's product group is considered infrequent.

In reply, the applicant submits that the passage that the examiner cited in Deaton and the figures cited do not anticipate the limitations defined by the recitations "said promotion usage denominator relates to a value of promotions exercised by the consumer" or "said promotion usage denominator relates to a location where promotions are exercised by said consumer", as recited in dependent claims 5 and 6, respectively.

At column 119 lines 12-14, Deaton discloses monitoring purchases relating to promotions exercised by the consumer, stating that:

Step 2: Issue incentive and record incentive in customer record. Step 3: Monitor and record in customer record customer's response to incentive. [Deaton column 119 lines 12-14.]

At column 120 lines 25-29, Deaton discloses an action to take if the customer has not responded to the incentive, stating that:

Step 5: If customer has NOT RESPONDED to the Coupon "A" incentive program by redeeming the coupon (or purchasing the desired product without the coupon), GOTO 15. [Deaton column 120 lines 25-29.]

Deaton discloses that the system "monitors and records the response". However, Deaton

does not disclose what is specifically being monitored, nor does it disclose either (1) that the monitoring is in response to the consumer's use of the promotions, or (2) that the consumer's use of the promotions is measured by the value of the promotions.

However, Deaton does not disclose specifically which details of the purchases relating to promotions exercised by the consumer are being monitored and does not disclose that the values of promotions exercised by the consumer or the locations where the consumer exercises the promotions are being monitored. The passage at column 120 lines 25-29 discloses an action to take if the customer has not responded to the incentive, but this does not anticipate the limitations defined by the recitations "said promotion usage denominator relates to a value of promotions exercised by the consumer" or "said promotion usage denominator relates to a location where promotions are exercised by said consumer".

In contrast, the subject application discloses support for the recitations in claims 5 and 6. See, for example, page 4 lines 10-13 of the specification, which states that:

In another embodiment, the relevancy of a promotion is determined based upon the value (dollar or relative) of the promotion. In another embodiment, the relevancy of a promotion is determined based upon the location where the promotion can be exercised. [Specification page 4 lines 10-13.]

Since the passage and the figures that the examiner cites in Deaton do not disclose either "said promotion usage denominator relates to a value of promotions exercised by the consumer" or "said promotion usage denominator relates to a location where promotions are exercised by said consumer", the rejections of claims 5 and 6 are improper and should be withdrawn for these additional reasons.

D. Deaton does not Disclose Determining Relevance of a Promotion Based Upon a Demographic Characteristic: the Rejections of Claim 7-19

i. The Rejection of Claim 7

In support of the rejections of claim 7, the examiner states that:

Regarding claims 7-19, Deaton teaches receiving identification

information; determining a demographic characteristic based upon the identification information, selecting a second promotion determined to be more relevant and paring the promotions ... (see fig. 43-45, col. 63 lines 7-67 and col. 119 and col. 149 line 43 to col. 150 line 18). [Office action mailed June 28, 2004 page 5 lines 3-6.]

Column 63 lines 7-67 in Deaton states that:

Step	Description
23-25	Shopping event and dollars spent are recorded over a period of time sufficient in length to get a good representation of the store's customer base.
31	A file containing a complete list of residents in a predetermined geographic area is obtained from a third party.
32	Create an empty TARGET FILE for writing records of prospective customers not appearing in store's database.
33	Read FIRST record from the file containing a complete list of residents in a predetermined geographic area.
36	Search in the store's database for to determine if this household is

- present in the store's database.
- 38-42 If this household is not contained in the store's database, write this record said TARGET FILE of prospective customers not appearing in the store's database.
- 45-47 Read the NEXT record from said list of prospective customers in a predetermined geographic area. If END OF FILE marker is found then proceed to step 48, otherwise LOOP back up to step 36.
- 48 Said TARGET FILE now contains a list of prospective customers from a predetermined geographic area that were NOT contained in the store's active list of customers.
- 53 Marketing may now be targeted toward this list of non-customers, such as mailing of inducement coupons or advertising.

In summary, it may be seen that the technique of FIGS. 14A and B provide a method for retail store marketing which begins with the stored database of existing customers of the retail store which has been accumulated in the manner previously described. The database includes each customer's checking account identification number for use as a unique customer identification code, along with additional customer identification data such as home address, telephone number and the like. Each time a retail customer enters the retail store and makes a purchase, the unique customer identification code of the customer is detected by

the present system. Comparison is made of each entered unique customer identification code with the stored database. A list of prospective customers of the retail store in a predetermined geographical area is obtained through conventional sources and is stored in the host processor 110. Comparison is made of the stored database with the list of prospective customers. All data is eliminated from the list of prospective customers which relates to information contained in the stored database, such that a non-customer database is produced which contains data relating only to prospective customers who do not appear on the stored database.

The present system generates a non-customer database which would allow the mailing of advertising material in a geographic area to customers who have not previously shopped, or who have infrequently shopped at the retail store.

Column 119 in Deaton states that:

Step	Description
1	Determine if this account is to receive incentives based on shopping history criteria pertaining to store visits, purchases to departments, purchases to a product group, or purchases to a single product. If account does not receive incentives, GOTO 8
2	Issue incentive and record incentive in customer record.
3	Monitor and record in customer record customer's response to incentive.
4	If a preset response criteria is met GOTO 6

- 5 Preset response criteria was not met.
Incentive may be modified in response
to failure to meet response criteria
such as:
Varying the value of the
incentive
Changing the conditional terms
of the incentive
Varying the product of the
incentive (i.e. Offering cash
discount versus merchandise)
No modification, retry incentive
GOTO 3.
- 6 Preset response criteria was met.
Incentive may be modified in response
to success in meeting response
criteria such as:
Reducing the incentive over
preselected period of time so as
to gradually taper off
incentives
Varying the product in order to
accomplish same as above
No modification maintain
incentive over preselected
period of time
- 7 If targeted marketing campaign is NOT

complete, GOTO 3

8 END OF PROCESS

FIGS. 44A and B illustrate a program flow chart of the present system providing a method of tracking infrequency to a product group, by generating Coupon "A". The program steps include:

Step	Description
1	<p>CVC Controller 965 accesses preset criteria for Coupon "A" for a product group. A product group may consist of similar products offered by a manufacturer (such as the variations of chocolate chip cookies offered by the same manufacturer) or products in a department.</p> <p>These preset criteria may comprise:</p> <p>Number of weeks for analyzing consumption of a product or product group</p> <p>UPC's of product or groups of products for tracking</p> <p>Levels of product consumption for infrequency (Coupon "A" Levels)</p> <p>Levels of incentives that relate to above levels of consumption infrequencies</p> <p>Program durations (i.e. numbers</p>

Column 149 line 43 to column 150 line 18 in Deaton states that:

15. A method for performing targeted marketing on shopping customers with a computer having a processor and memory, the method comprising the steps of:

entering into the memory at a store's point-of-sale the account code of a plurality of payment instruments from a plurality of different financial institutions for use as a unique customer identification code in response to the presentation of customers' payment instruments at the point-of-sale;

entering into the memory data at the point-of-sale relating to the customer's shopping transactions, including data relating to a plurality of different products purchased by the customer;

creating a database of the store's customers' shopping transactions and account codes in response to said account codes and said data, including information regarding products frequently previously purchased by the customer relative to said plurality of different products previously purchased;

generating with the processor a first signal in response to entry of account codes of customers whose prior transactions at the store meet shopping history criteria, said first signal being contingent upon the customer meeting a future shopping criteria and said first signal being related to at least one of said products stored in said database as being frequently previously purchased by the customer relative to said plurality of different products previously purchased.

16. The method of claim 15 and further comprising:

effecting a first sales promotion to said customer in response to said first signal;

monitoring said customer's shopping transactions subsequent to said first sales promotion;

generating with the processor a second signal in dependence upon the results of said monitoring of a customer whose shopping activity fails to meet a response criteria; and

effecting a subsequent second sales promotion to said customers whose shopping activity fails to meet said predetermined response criteria, said second sales promotion being differentiated from said first sales promotion. [Deaton column 149 line 43 to column 150 line 18.]

In reply, the applicant submits that the passages that the examiner cited in Deaton and the figures cited do not anticipate the limitations defined by the recitation "selecting a promotion determined to be more relevant to said consumer identified by said identification information based upon said demographic characteristic of said consumer," as recited in claim 7.

The cited passages and figures disclose issuing incentives based on information pertaining to a customer's identification [Deaton column 63 lines 44-48], shopping history [Deaton column 149 lines 63-65], and purchases [Deaton column 149 lines 59-62].

However, they do not disclose a determining relevance based upon a demographic characteristic.

The subject application discloses support for the recitation in claim 7. See, for example, page 9 line 30 through page 10 line 4, which states that:

Consumer demographic table 616 can contain data regarding the demographics of the individual consumer such as, e.g., age, profession, gender, race, education level, marital status, number of children, pet ownership, and other demographic factors. In one embodiment, this demographic information can be accessed by processor 611 for analysis to determine, e.g., the relevancy of a promotion and/or to identify a highly relevant promotion for a product and/or product class. [Specification page 9 line 30 through page 10 line 4.]

Additional support can be found at page 10 lines 18-30, which states that:

Naturally, the consumer's demographic information in consumer purchase history table 617 can be combined with the consumer's demographic characteristics in consumer demographic table 616 and/or the consumer's promotion exercise record in exercised promotion table 615 to more accurately

identify the relevancy of a promotion and/or a highly relevant promotion.

In some embodiments, a variety of information regarding analysis tools is stored in analysis tools table 618 of central database system 610. Analysis tools table 618 can contain data regarding, e.g., weighting coefficients for certain demographic and/or purchase record information, methods for analyzing various types of data, methods for extracting various types of data, methods for filtering various types of data, and/or other information that may help a practitioners of predictive targeting to determine suitably paired promotions by determining, e.g., the relevancy of a promotion and/or to identify a highly relevant promotion for a product and/or product class. [Specification page 10 lines 18-30.]

Furthermore, the applicant submits that figure 43-45, column 63 lines 7-67 and column 119 and column 149 line 43 to column 150 line 18 in Deaton do not disclose selecting a second promotion determined to be more relevant to a consumer and pairing a first low relevance promotion with a second promotion for the reasons discussed in section B. 2. A. above. Therefore, Deaton does not anticipate the limitations defined by the recitation “selecting a second promotion determined to be more relevant to said consumer identified by said identification information based upon said category purchase history of said consumer; and pairing said first low relevance promotion with said second promotion” as recited in claim 7.

For all of the foregoing reasons, the rejection of claim 7 is improper and should be withdrawn.

Because claims 8-19 and 27 depend either directly or indirectly from one or more of claims 1, 4, and 7, the rejections of claims 8-19 and 27 are also improper and should be withdrawn.

ii. **Deaton does not Disclose the Limitations of Dependent Claims 8-19**

The examiner has not presented a prima facie case for the 35 USC 102(e) rejection of claims 8-19. The examiner has presented a rejection which only addresses the method of claim 7. See Office Action mailed June 28, 2004 page 5 lines 3-6. The examiner (or the Board, if the Board is the first body to raise a particular ground for rejection) "bears the initial burden . . . of presenting a prima facie case of unpatentability." In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “a claim is anticipated only if each and

every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The examiner has not met the burden for showing a prima facie case of anticipation by Deaton. Each claim is discussed below.

a. Claim 8

The examiner does not provide support for the 35 USC 102(e) rejection of claim 8 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 8 of “said demographic characteristic of said consumer comprises a pet ownership by said consumer.” Therefore, the rejection of claim 8 is improper and should be withdrawn.

b. Claim 9

The examiner does not provide support for the 35 USC 102(e) rejection of claim 9 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 9 of “said demographic characteristic of said consumer comprises parenthood.” Therefore, the rejection of claim 9 is improper and should be withdrawn.

c. Claim 10

The examiner does not provide support for the 35 USC 102(e) rejection of claim 10 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 10 of “providing said paired first low relevance promotion and second promotion to said consumer.” Therefore, the rejection of claim 10 is improper and should be withdrawn.

d. Claim 11

The examiner does not provide support for the 35 USC 102(e) rejection of claim 11 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 11 of “said pairing step comprises printing said first low relevance promotion and said second promotion on a sheet of paper.” Therefore, the rejection of claim 11 is improper and should be withdrawn.

e. Claim 12

The examiner does not provide support for the 35 USC 102(e) rejection of claim 12 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 12 of “said first low relevance promotion and said second promotion are in a packaged goods industry.” Therefore, the rejection of claim 12 is improper and should be

withdrawn.

f. Claim 13

The examiner does not provide support for the 35 USC 102(e) rejection of claim 13 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 13 of “said first low relevance promotion and said second promotion are for goods from a same promoter.” Therefore, the rejection of claim 13 is improper and should be withdrawn.

g. Claim 14

The examiner does not provide support for the 35 USC 102(e) rejection of claim 14 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 14 of “said first low relevance promotion and said second promotion are for goods from different promoters.” Therefore, the rejection of claim 14 is improper and should be withdrawn.

h. Claim 15

The examiner does not provide support for the 35 USC 102(e) rejection of claim 15 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 15 of “said first low relevance promotion is for a new product.” Therefore, the rejection of claim 15 is improper and should be withdrawn.

i. Claim 16

The examiner does not provide support for the 35 USC 102(e) rejection of claim 16 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 16 of “said new product is new to a store.” Therefore, the rejection of claim 16 is improper and should be withdrawn.

j. Claim 17

The examiner does not provide support for the 35 USC 102(e) rejection of claim 17 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 17 of “said new product is new to said consumer.” Therefore, the rejection of claim 17 is improper and should be withdrawn.

k. Claim 18

The examiner does not provide support for the 35 USC 102(e) rejection of claim 18 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the

recitation in claim 18 of “said new product is newly developed.” Therefore, the rejection of claim 18 is improper and should be withdrawn.

I. Claim 19

The examiner does not provide support for the 35 USC 102(e) rejection of claim 19 over Deaton. The examiner has not shown that Deaton discloses the limitation defined by the recitation in claim 19 of “selecting a third promotion determined to be more relevant to said consumer identified by said identification information; and pairing said third promotion with said first low relevance promotion and said second promotion.” Therefore, the rejection of claim 19 is improper and should be withdrawn.

F. Rejections of Claims 20 and 21

In support of the rejections of claims 20 and 21, the examiner states that:

Claims 20 and 21 are rejected as stated above in claim 1. [Office action mailed June 28, 2004 page 5 line 7.]

In reply, the applicant submits that claim 20 is a system claim that corresponds to method claim 1. Therefore, as the applicant claims in section B. 2. A. above, the rejection of claim 20 is improper and should be withdrawn.

The examiner does not provide support for the 35 USC 102(e) rejection of claim 21 over Deaton. Deaton does not disclose the recitations in claim 21 of “a potential second promotion database including a plurality of potential second promotions;” and “a processor configured to select a second promotion having a high relevance to said consumer from said plurality of potential second promotions based on said category purchase history and to pair second promotion with said first low relevance promotion.” Therefore, the rejection of claim 21 is improper and should be withdrawn.

G. Rejections of Claims 22 and 23

In support of the rejections of claims 22 and 23, the examiner states that:

Claims 22 and 23 are rejected as stated above in claim 4. [Office action mailed June 28, 2004 page 5 line 8.]

In reply, the applicant submits that claim 22 is a system claim that corresponds to method claim 4. Therefore, as proven in section B. 2. B. above, the rejection of claim 22 is improper and should be withdrawn.

The examiner does not provide support for the 35 USC 102(e) rejection of claim 23 over Deaton. Deaton does not disclose the recitations in claim 23 of “a potential second promotion database including a plurality of potential second promotions;” and “a processor configured to select a second promotion having a high relevance to said consumer from said plurality of potential second promotions based on said promotion usage denominator and to pair said second promotion with said first low relevance promotion.” Therefore, the rejection of claim 23 is improper and should be withdrawn.

H. Rejections of Claims 24 and 25

In support of the rejections of claims 24 and 25, the examiner states that:

Claims 24 and 25 are rejected as stated above in claim 7. [Office action mailed June 28, 2004 page 5 line 9.]

In reply, the applicant submits that claim 24 is a system claim that corresponds to method claim 7. Therefore, as proven in section B. 2. D. i. above, the rejection of claim 24 is improper and should be withdrawn.

The examiner does not provide support for the 35 USC 102(e) rejection of claim 25 over Deaton. Deaton does not disclose the recitations in claim 25 of “a demographic database including a demographic characteristic of said consumer, said demographic characteristic queried by said received identification information”; “a potential second promotion database including a plurality of potential second promotions;” and “a processor configured to select a second promotion having a high relevance to said consumer from said plurality of potential second promotions based on said demographic characteristic and to pair said second promotion with said first low relevance promotion.” Therefore, the rejection of claim 25 is improper and should be withdrawn.

I. The Rejections of Claims 26 and 27: Deaton does not Disclose Receiving Promotion Information Regarding First Low Relevance and Second Promotion, Pairing the Promotions and Identifying the Customer Likely to Exercise Said Second Promotion and Providing

the Consumer with the Paired Promotions

In support of the rejections of claims 26 and 27, the examiner states that:

Regarding claim 26 and 27, Deaton teaches receiving promotion information regarding first low relevance and second promotion, pairing the promotions and identifying the customer likely to exercise said second promotion and providing the consumer with the paired promotions (see fig. 43-45 and col. 118 line 65 to col. 123 line 23). [Office action mailed June 28, 2004 page 5 lines 10-13.]

Column 118 line 65 to column 123 line 23 in Deaton states that:

FIG. 43 is a program flow chart illustrating the operation of the system to provide response driven marketing based on shopping history criteria. The program steps include:

- | Step | Description |
|------|---|
| 1 | Determine if this account is to receive incentives based on shopping history criteria pertaining to store visits, purchases to departments, purchases to a product group, or purchases to a single product.
If account does not receive incentives, GOTO 8 |
| 2 | Issue incentive and record incentive in customer record. |
| 3 | Monitor and record in customer record customer's response to incentive. |
| 4 | If a preset response criteria is met |

GOTO 6

- 5 Preset response criteria was not met.
Incentive may be modified in response
to failure to meet response criteria
such as:
Varying the value of the
incentive
Changing the conditional terms
of the incentive
Varying the product of the
incentive (i.e. Offering cash
discount versus merchandise)
No modification, retry incentive
GOTO 3.

- 6 Preset response criteria was met.
Incentive may be modified in response
to success in meeting response
criteria such as:
Reducing the incentive over
preselected period of time so as
to gradually taper off
incentives
Varying the product in order to
accomplish same as above
No modification maintain
incentive over preselected
period of time

- 7 If targeted marketing campaign is NOT
 complete, GOTO 3
- 8 END OF PROCESS

FIGS. 44A and B illustrate a program flow chart of the present system providing a method of tracking infrequency to a product group, by generating Coupon "A". The program steps include:

Step	Description
1	CVC Controller 965 accesses preset criteria for Coupon "A" for a product group. A product group may consist of similar products offered by a manufacturer (such as the variations of chocolate chip cookies offered by the same manufacturer) or products in a department. These preset criteria may comprise: Number of weeks for analyzing consumption of a product or product group UPC's of product or groups of products for tracking Levels of product consumption for infrequency (Coupon "A" Levels) Levels of incentives that relate to above levels of consumption

infrequencies

Program durations (i.e. numbers
of trips or numbers of weeks)

for each Coupon "A" level

Varying Super "A" levels for
response to an unsuccessful

Coupon "A" attempt

Program durations for each Super
"A" level

- 2 CVC Controller 965 accesses Coupon
"A" tracking fields for this account
(or accounts if more than 1 in a
household). These fields determine
if Coupon "A" and/or Super "A"
incentives are currently in effect
for this account. As previously
mentioned, incentives for up to 32
trips or periods may be contained in
a Coupon "A" and/or Super "A"
marketing campaign. These counters
keep track of the current position in
a Coupon "A" and/or Super "A"
campaign for this account.
- 3 If customer is currently in a Super
"A" program, GOTO 8.
- 4 If customer is NOT currently in a
Coupon "A" program, GOTO 17.

- 5 If customer has NOT RESPONDED to the
Coupon "A" incentive program by
redeeming the coupon (or purchasing
the desired product without the
coupon), GOTO 15.
- 6 Increment the field for number of
trips as Coupon "A".
- 7 If Coupon "A" program is complete,
GOTO 17. OTHERWISE, GOTO 11.
- 8 If customer has not responded to this
level of the Super "A" program by
redeeming the coupon (or purchasing
the desired product without the
coupon), GOTO 12.
- 9 Increment the field for number of
trips in Super "A".
- 10 If Super "A" program is complete,
customer falls back into Coupon "A"
program where they left off.
If Super "A" program is NOT COMPLETE,
GOTO 16.
- 11 Mark account to receive the Coupon
"A" coupon(s) for this product or
product group. This information will
be used later when building a list of
coupons to be spooled to the
customer. GOTO 22.

- 12 This level of Super "A" incentive has proven inadequate; increment the level of Super "A" for incenting this account.
- 13 If the Super "A" level is greater than the maximum number of levels, GOTO 14. OTHERWISE, GOTO 16
- 14 Set the Super "A" level to the highest available level. GOTO 16
- 15 Set the Super "A" level to the first level.
- 16 Mark account to receive the Super "A" coupon(s) at the indicated Super "A" level for this product or product group. This information will be used later when building a list of coupons to be spooled to the customer. GOTO 22.
- 17 Access the criteria for this product group. This criteria is either based on preset criteria or on the actual average consumption of this product and related products by this account.
- 18 Calculate the actual consumption rate for this product or product group for this account for the preset number of

weeks.

- 19 If the consumption rate is less than
the criteria set for this account,
GOTO 20. OTHERWISE, 23.
- 20 Initialize fields for tracking this
Coupon "A" program to zeros and mark
account as Coupon "A" for this
product or product group.
- 21 Access preset criteria for assigning
an incentive level based on
consumption. For example, the
criteria may assign the following
levels based on consumption:
level 1 - for no consumption of
product or product group,
level 2 - 1-20% of the preset
consumption criteria,
level 3 - 21-40% of the preset
consumption criteria,
level 4 - 41-60% of the preset
consumption criteria, etc.
- 22 Dispense incentive(s) to customer
either at the point-of-sale or
through direct mail.
- 23 END OF PROCESS.

FIGS. 45A-B illustrate a program flow chart of the operation of the system

to provide a method of maximizing purchases to a product group, in order to generate a Coupon "M". The steps include:

- 1 CVC Controller accesses preset criteria for maximizing purchases (Coupon "M") for a product group. A product group may consist of similar products offered by a manufacturer (such as the variations of chocolate chip cookies offered by the same manufacturer) or products in a department.

These preset criteria may consist of:

Number of weeks for analyzing consumption of a product or product group

UPC's of product or groups of products for tracking

Levels of product consumption for maximizing (Coupon "M" Levels)

Levels of incentives that relate to above levels of consumption maximizing.

Program durations (i.e. numbers of trips or numbers of weeks) for each Coupon "M" level

Varying Super "M" levels for

response to an unsuccessful
Coupon "M" attempt
Program durations for each Super
"M" level

- 2 CVC Controller accesses Coupon "M"
tracking fields for this account (or
accounts if more than 1 in a
household). These fields determine
if Coupon "M" and/or Super "M"
incentives are currently in effect
for this account. As previously
mentioned, incentives for up to 32
trips or periods may be contained in
a Coupon "M" and/or Super "M"
marketing campaign. These counters
keep track of the current position in
a Coupon "M" and/or Super "M"
campaign for this account.
- 3 If customer is currently in a super
"M" program, GOTO 8.
- 4 If customer is NOT currently in a
Coupon "M" program, GOTO 17.
- 5 If customer has NOT RESPONDED to the
Coupon "M" incentive program by
redeeming the coupon (or purchasing
the desired product without the
coupon), GOTO 15.

- 6 Increment the field for number of
trips as Coupon "M".
- 7 If Coupon "M" program is complete,
GOTO 17. OTHERWISE, GOTO 11.
- 8 If customer has NOT RESPONDED to this
level of the Super "M" program by
redeeming the coupon (or purchasing
the desired product without the
coupon), GOTO 12.
- 9 Increment the field for number of
trips in Super "M".
- 10 If Super "M" program is complete,
customer falls back into Coupon "M"
program where they left off.
If Super "M" program is NOT COMPLETE,
GOTO 16.
- 11 Mark account to receive the Coupon
"M" coupon(s) for this product or
product group. This information will
be used later when building a list of
coupons to be spooled to the
customer. GOTO 22.
- 12 This level of Super "M" incentive has
proven. inadequate; increment the
level of Super "M" for incenting this
account.
- 13 If the Super "M" level is greater

than the maximum number of levels,
GOTO 14. OTHERWISE, GOTO 16

14 Set the Super "M" level to the
highest available level. GOTO 16

15 Set the Super "M" level to the first
level.

16 Mark account to receive the Super "M"
coupon(s) at the indicated Super "M"
level for this product or product
group. This information will be used
later when building a list of coupons
to be spooled to the customer. GOTO
22.

17 Access the criteria for this product
group. This criteria is either based
on preset criteria or on the actual
average consumption of this product
and related products by this account.

18 Calculate the actual consumption rate
for this product or product group for
this account for the preset number of
weeks.

19 If the consumption rate is less than
the criteria set for this account,
GOTO 20. OTHERWISE, 23.

20 Initialize fields for tracking this
Coupon "M" program to zeros and mark

- account as Coupon "M" for this product or product group.
- 21 Access preset criteria for assigning an incentive level based on consumption. For example, the criteria may assign the following levels based on consumption:
- level 1 - for no consumption of product or product group,
- level 2 - 1-20% of the preset consumption criteria,
- level 3 - 21-40% of the preset consumption criteria,
- level 4 - 41-60% of the preset consumption. criteria, etc.
- 22 Dispense incentive(s) to customer either at the point-of-sale or through direct mail.
- 23 END OF PROCESS. [Deaton column 118 line 65 to column 123 line 23.]

In reply, the applicant submits that the passage and the figures that the examiner cites in Deaton do not anticipate the limitations defined by the recitations “receiving promotion information regarding said first low relevance promotion and a second promotion;” “pairing said first low relevance promotion with said second promotion;” “identifying a consumer likely to exercise said second promotion;” and providing said consumer with said paired first low relevance promotion and second promotion”, as recited in claim 26.

The cited passage and figures disclose response driven marketing, which refers to varying an incentive - it does not refer to pairing incentives - based upon promotion information.

At column 119 lines 11-18, Deaton discloses how figure 43 monitors a customer's response to an incentive, and modifies a subsequent incentive based upon a customer's failure to meet response criteria, stating that:

Step 2: Issue incentive and record incentive in customer record. Step 3: Monitor and record in customer record customer's response to an incentive. Step 4: If a preset response criteria is met, GOTO 6. Step 5: Preset response criteria was not met. Incentive may be modified in response to failure to meet response criteria. . . [Deaton column 119 lines 11-18.]

Deaton does not disclose "pairing" promotions. It discloses offering a first promotion, monitoring the consumer's response to the first promotion, and then based on the consumer's response, offering a subsequent promotion.

Since Deaton does not disclose pairing a first and second promotion, Deaton does not disclose "receiving promotion information regarding said first low relevance promotion and a second promotion;" "pairing said first low relevance promotion with said second promotion;" "identifying a consumer likely to exercise said second promotion;" or providing said consumer with said paired first low relevance promotion and second promotion."

In contrast, the subject application discloses support for the recitations in claim 26. See, for example, page 11 lines 8-18 of the specification, which states that:

Promotion information that will allow the vendor and/or maintainer of the central database system 610 to determine the relevancy of a promotion, select a highly relevant promotion, and/or provide paired promotions by way of the promotion output device 634 at the vendor terminal 630 is found in the promotion storage table 613. Information located in promotion storage table 613 can therefore include information that is used to determine the relevancy of a promotion (to a consumer that is, e.g., identified by identification input device 638) as well as to produce the promotion itself (as part of the pair) at promotion output device 634. The information necessary to produce a promotion can include the value of the promotion, a product to which the promotion relates, a barcode or other identifier to be included upon the promotion, and/or any image or other

packaging information related to the promotion. [Specification page 11 lines 8-18.]

Therefore, the rejection of claim 26 is improper and should be withdrawn.

J. Deaton does not Disclose the Relevance related and pairing related Limitations: the Rejections of Claims 28 and 29

In support of the rejections of claims 28 and 29, the examiner states that:

Regarding claims 28 and 29, Deaton selecting a first promotion determined to be more relevant to a consumer based on purchase history data; determining a second promotion determined to be less relevant to said consumer base [sic] upon said purchase history data; pairing said first promotion with said second promotion; and providing the paired promotions to said consumer (see fig. 43-45 and col. 118 line 65 to col. 123 line 23). [Office action mailed June 28, 2004 page 5 lines 24-18.]

Column 118 line 65 to column 123 line 23 in Deaton is copied in section B. 2. I. above.

In reply, the applicant submits that the passage and the figures that the examiner cites in Deaton do not anticipate the limitations defined by the recitations “pairing said first promotion with said second promotion” and “providing the paired promotions to said consumer”, as recited in claims 28 and 29.

The cited passage and figures disclose response driven marketing, which refers to varying an incentive - it does not refer to pairing incentives - based upon a consumer’s purchase history criteria.

At column 119 lines 5-10, Deaton discloses how figure 43 evaluates a customer’s shopping history to determine whether or not to issue incentives, stating that:

Step 1: Determine if this account is to receive incentives based on

shopping history criteria pertaining to store visits, purchases to departments, purchases to a product group, or purchases to a single product. [Deaton column 119 lines 5-10.]

Deaton does not disclose “pairing” promotions. It discloses offering a first promotion, monitoring the consumer’s response to the first promotion, and then based on the consumer’s response, offering a subsequent promotion.

Since Deaton does not disclose pairing a first and second promotion, Deaton does not disclose “pairing said first promotion with said second promotion” and “providing the paired promotions to said consumer”.

In contrast, the subject application discloses support for the recitations in claims 28 and 29. See, for example, page 14 lines 3-11 of the specification, which states that:

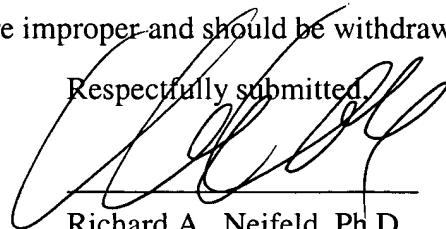
For example, the other database system 660 now contains consumer demographic table 616 and consumer purchase history table 617. The other database system 660 can be owned and/or operated by, e.g., a third party and/or a practitioner of targeted marketing. In this way, a practitioner of targeted marketing can use other demographic and/or historical purchase information to target promotions. This is especially relevant to a practitioner of targeted marketing who is using proprietary demographic and/or consumer purchase history information, such as that collected by the vendor itself, to determine one or more promotions to be included in the paired promotions provided to the consumer. [Specification page 14 lines 3-11.]

Therefore, the rejections of claims 28 and 29 are improper and should be withdrawn.

9/28/04

Date

Respectfully submitted,



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Registration No. 35,299

Attorney of Record

Printed: September 28, 2004 (5:53pm)


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Attachment 1



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The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

frequency

SYLLABICATION: fre·quen·cy

PRONUNCIATION:  frē'kwən-sē

NOUN: Inflected forms: pl. **fre·quen·cies**

1. The property or condition of occurring at frequent intervals. **2.** *Mathematics & Physics* The number of times a specified periodic phenomenon occurs within a specified interval, as: **a.** The number of repetitions of a complete sequence of values of a periodic function per unit variation of an independent variable. **b.** The number of complete cycles of a periodic process occurring per unit time. **c.** The number of repetitions per unit time of a complete waveform, as of an electric current. **3. Statistics** **a.** The number of measurements in an interval of a frequency distribution. **b.** The ratio of the number of times an event occurs in a series of trials of a chance experiment to the number of trials of the experiment performed.

ETYMOLOGY: Latin *frequentia*, multitude, from *frequēns*, *frequent-*, crowded, numerous, frequent.

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Attachment 2

promotion compensates the promoter with the "more relevant" promotion. In another embodiment, the relevancy of a promotion is determined based upon purchase history. In another embodiment, the relevancy of a promotion is determined based upon the number of times a product is purchased. In another embodiment, the relevancy of a promotion is determined based upon the number of times a product category is purchased. In another embodiment, the relevancy of a promotion is determined based upon the loyalty of a consumer to a brand (e.g., how often the consumer purchased a particular brand). In another embodiment, the relevancy of a promotion is determined based upon the volume of consumer purchases. In another embodiment, the relevancy of a promotion is determined based upon the frequency of consumer purchases. In another embodiment, the relevancy of a promotion is determined based upon the value (dollar or relative) of the promotion. In another embodiment, the relevancy of a promotion is determined based upon the location where the promotion can be exercised. In another embodiment, the pairing is performed to promote a product to a consumer who has never or only rarely purchased the product. In another embodiment, the pairing is performed to promote a new product. In another embodiment, the pairing is performed to promote a product new to a location. Other embodiments entail the combination of one or more of any of the embodiments described above. For example, the relevancy of a product may be determined based on loyalty and the frequency of purchase.

As used herein, the term "promotion" refers to any offer, advertisement, incentive, coupon, and/or commercial for promoting one or more goods and/or services.

As used herein, to "exercise" a promotion refers to any redemption, consumption, employment, application, availment, and/or wielding of a promotion.

As used herein, the "relevancy" of a promotion refers to the likelihood that a promotion will be exercised.

As used herein, to "pair" promotions refers to any association of two or more promotions including printing together, requiring exercise together, displaying together, and/or showing together. Contrary to some common usages of the word "pairing," the present invention is not limited to associating only two promotions. Thus, three or more promotions may be "paired."

BRIEF DESCRIPTION OF THE DRAWINGS